

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, )  
INC., )  
                          )  
Plaintiff, )  
                          ) C.A. No. 08-862-JJF-LPS  
v. )  
                          )  
FACEBOOK, INC., a )  
Delaware corporation, )  
                          )  
Defendant. )

July 14, 2009  
2:30 p.m.  
Teleconference

BEFORE: THE HONORABLE LEONARD P. STARK  
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP  
BY: PHILIP A. ROVNER, ESQ.

-and-

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9 BY: HEIDI L. KEEFE, ESQ.10 Counsel for Defendant  
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1 THE COURT: Good afternoon,  
2 counsel. This is Judge Stark.

3 Let me know who's on the line,  
4 please.

5 MR. CAPONI: Good afternoon, Your  
6 Honor. This is Eric Caponi from Blank Rome from  
7 Facebook. And with me is Heidi Keefe from White  
8 & Case.

9 MS. KEEFE: Good afternoon, Your  
10 Honor.

11 THE COURT: Good afternoon.

12 MR. ROVNER: And Your Honor, this  
13 is Phil Rovner from Potter, Anderson & Corroon  
14 for the plaintiff. And with me on the line is  
15 Paul Andre from King & Spaulding in California.

16 MR. ANDRE: Good afternoon, Your  
17 Honor.

18 THE COURT: Good afternoon. You  
19 folks are for Facebook; correct?

20 MR. ANDRE: Your Honor, yeah.  
21 We're for Leader Technologies, plaintiff.

22 THE COURT: I'm sorry. Okay. Got  
23 you

24 MS. KEEFE: And Mr. Caponi and

1 myself are for Facebook.

2 THE COURT: Okay. Forgive me.

3 Okay. So for the record, this is  
4 the Leader Technologies versus Facebook. It's  
5 our Civil Action Number 08-862-JJF. And the  
6 reason for the call today is that both parties  
7 have some discovery requests, certain discovery  
8 disputes.

9 And I reviewed the letters that  
10 were submitted in connection with both parties'  
11 dispute. I want to begin first and hear just  
12 briefly from each side with respect to  
13 Facebook's complaint regarding essentially the  
14 response to Facebook's Interrogatory Number 10.

15 And let me hear briefly first from  
16 Facebook on this.

17 MS. KEEFE: Thank you, Your Honor.  
18 Again, this is Heidi Keefe.

19 Our complaint is actually, I  
20 think, relatively small. What we're looking for  
21 here is to simply have Leader's response to  
22 Interrogatory 10 be complete. This is an  
23 interrogatory in that it is -- it addresses a  
24 very limited universe of documents and limited

1 information.

2 We are asking Leader to give us  
3 their support for their contention that the  
4 earlier filed, shorter application supports the  
5 later issued claims of the patent at issue in  
6 this case.

7 All of the information needed to  
8 answer that interrogatory is within the four  
9 corners of the specification of the patent in  
10 question. When Leader came back with its  
11 response, its response was, Well, the first  
12 response was simply everything. And we said,  
13 That's not good enough. We need to understand  
14 limitation by limitation where it is.

20 It's just some of the claims and  
21 some of the examples that we find. And we're  
22 simply asking, in order to understand what their  
23 position is and move this issue forward, to have  
24 a final and complete answer.

1                   Now, we understand that if,  
2                   through the course of discovery, something comes  
3                   out that completely changes their mind under the  
4                   Federal Rules, they could come back and attempt  
5                   to supplement their responses.

6                   But we're asking for a complete  
7                   response as they know it at this time. And we  
8                   simply don't have that yet.

9                   THE COURT: All right. I  
10                  understand what you're asking for.

11                  But as I understand it, they've  
12                  indicated to you that they believe the priority  
13                  date is the date of filing of the provisional  
14                  filing. So you know what their position is, so  
15                  you could determine what the prior art is based  
16                  on what they've already told you.

17                  Help me out on why it is you're  
18                  entitled to or what's prejudicing you from them  
19                  reserving a right to potentially come up with  
20                  additional arguments or contentions based on  
21                  what you yourself describe as a limited universe  
22                  of documents.

23                  Why can't they reserve the right  
24                  to do that?

1 MS. KEEFE: Well, I think -- I  
2 think it goes to a number of things, Your Honor.  
3 I think, first, what we're talking about in  
4 terms of the priority date is that the burden is  
5 on Leader to prove the priority date.

24 But the way that they crafted

1           their answers saying that it's simply exemplary,  
2           they simply don't know or they may have  
3           different ideas later doesn't allow us to do  
4           that, and doesn't allow us to know what the  
5           universe of prior art is.

6                         The burden is on them at this  
7                         point. We'd like a final answer.

8                         If their final answer is as it  
9                         stands right now and they have no other  
10                         information and they confirm that, then we'd  
11                         like to move for summary judgment on this issue  
12                         that they're not entitled to that prior date.

13                         That's what we're leading to so  
14                         that we can have as an absolute what the  
15                         universe of prior art will be in this case.

16                         THE COURT: All right. Let me  
17                         hear from Leader, please.

18                         MR. ANDRE: This is Paul Andre,  
19                         Your Honor, for Leader. I think Your Honor  
20                         understands the argument quite well that we put  
21                         in our letter brief. The patent is entitled to  
22                         the provisional date absent a showing by clear  
23                         and convincing evidence that the claims are not  
24                         enabled by the provisional application.

1 There's been no clear and  
2 convincing evidence put forward at all, actually  
3 no evidence at all. So our position is that we  
4 can rely on the entirety of the application. We  
5 tried to provide an exemplar just to avoid this  
6 situation with the Court.

10 THE COURT: Okay. Fine.

11 Ms. Keefe, anything else to add?

12 MS. KEEFE: I would just say, Your  
13 Honor, we actually have provided evidence the  
14 word track, for example, which is in every  
15 claim, doesn't appear anywhere in the priority  
16 application that they're claiming full support  
17 of. And I disagree with Mr. Andre's statement  
18 of the law, but that's in our briefing as well.

19 So . . .

20 THE COURT: Okay. Fine.

21 I'm prepared to rule on Facebook's  
22 request here for further response to  
23 Interrogatory Number 10.

24 And at this time, I'm denying

1 Facebook's request. I think, given the status  
2 of the case, that Leader's response at this time  
3 is adequate. It's been recognized by Facebook  
4 that it may be that Leader will have to or will  
5 be in a position to supplement its response over  
6 time.

7 And I think there's nothing that I  
8 see that precludes such a supplement from being,  
9 based on the documents that Leader is already  
10 aware of and has identified and is relying on at  
11 this time, or if discovery proves that there's  
12 additional evidence on which it can rely that it  
13 thinks is responsive to Interrogatory Number 10,  
14 Leader may do that as well.

15 So I'm denying Facebook's request  
16 at this time.

17 Let's now turn to the issues that  
18 Leader has raised with respect to Facebook. And  
19 I do want to go through these quickly, but one  
20 by one.

21 And since Leader is the moving  
22 party on these, let me hear first from Leader on  
23 the first issue, which goes to the production of  
24 documents from previous litigation.

1 MR. ANDRE: Your Honor, this is  
2 Paul Andre. Once again what we're asking for is  
3 relevant documents. Not all the documents, just  
4 the relevant documents from two particular  
5 litigations that we've identified, the Connect U  
6 case and the Cross Atlanta case.

12 It discusses the development of  
13 the Facebook website, the design features, both  
14 past and present of their website, indication of  
15 key witnesses and documents and staff, certain  
16 evidence like laptops, et cetera. So we know  
17 that's relevant.

18 And Cross Atlanta we believe would  
19 be relevant as well because it relates to  
20 certain applications on the website regarding --  
21 you know, it would -- that would be involved in  
22 our case as well.

23 THE COURT: What about the  
24 suggestion that Judge Farnan has already

1       reviewed this request for relief and set forth  
2       an alternative procedure in that you're not  
3       fully complying with that procedure for getting  
4       this type of information?

5                    MR. ANDRE: The alternative  
6       procedure, Your Honor, was coming to Your Honor  
7       with these requests. I actually brought this up  
8       at the end of the hearing saying that, you know,  
9       we still have one issue that was not related to  
10      the source codes, but these documents in  
11      particular.

12                  He specifically said that we could  
13      bring that up with Your Honor with a new  
14      procedure that he's instituting for all new  
15      discovery disputes. And his order was very  
16      specific as well about the course of non-case  
17      dispositive motions and referred them to Your  
18      Honor.

19                  So I think what Judge Farnan was  
20      talking about and the way he explicitly said  
21      that was we could bring this up during this  
22      procedure.

23                  THE COURT: Okay. Ms. Keefe or  
24      Mr. Caponi, you want to respond?

1 MS. KEEFE: Your Honor, obviously,  
2 we disagree. We think that what happened --  
3 this is actually -- all of these issues are  
4 disputes that the parties have been having since  
5 the very, very beginning of this case in terms  
6 of what is the extent of discovery that's  
7 allowed by the infringement contentions that  
8 Leader has provided thus far.

18 And based on, you know, that  
19 review, we would be able to narrow the case down  
20 through the infringement contentions to what was  
21 truly relevant.

22 Mr. Andre did, in fact, raise the  
23 issue of the related or unrelated litigation at  
24 the end of the hearing. And what I said to

1           Judge Farnan was, Your Honor, this relates  
2           exactly in the same way that the technology  
3           documents do. We can't possibly know what's  
4           related and what is not until we know what the  
5           technology is.

6                   At that point, the judge  
7           reiterated that he was denying all of the  
8           motions and that we were to go forward on this  
9           new procedure.

10                  I then raised the fact that we had  
11           a completely different issue, which was a broad  
12           spectrum response and should we bring that  
13           before Judge Farnan or should we bring that  
14           before Your Honor, because he was deferring  
15           future issues to you. And he said future issues  
16           will go in front of Judge Stark.

17                  He did not say we can readdress  
18           all of the issues that had come before. Those  
19           had been denied in favor of the staggered  
20           approach that he put in place.

21                  And that staggered approach makes  
22           sense because it's all about figuring out what  
23           is the relevant part of Facebook's website  
24           that's at issue. And, therefore, what parts of

1 other litigations may or may not be relevant.

2 THE COURT: Okay. Mr. Andre.

3 MR. ANDRE: Your Honor, I disagree  
4 completely with Ms. Keefe's characterization of  
5 what Judge Farnan ruled on and what he stated.

6 He actually stated he denied all  
7 motions as moot. It says it on Page 34 of the  
8 transcript. And then he -- basically he wants  
9 to defer all future discovery to Your Honor to  
10 handle these.

11 The fact of the matter is Facebook  
12 has been complaining all along that they don't  
13 understand the scope of the case. So what we've  
14 done now, we've identified specifically, I don't  
15 know if you call them source code modules or  
16 data files, we've identified ones that we were  
17 interested in looking at at this point.

18 So they know what we are looking  
19 at to be relevant any way, so they know what  
20 documents they can produce with the previous  
21 litigation.

22 It's a little bit different,  
23 because I know with the Connect U case, one of  
24 our positions is they copied the White paper we

1                   published. And they were able to design and  
2                   develop their website based on that White paper.

3                   There's nothing unclear about  
4                   that. I've looked at this testimony and read it  
5                   myself, and it's very clear that they talk about  
6                   how they designed and developed the website and  
7                   how they were able to code the entire thing in  
8                   two weeks. Or less than two weeks in some  
9                   cases.

10                  So we know that's relevant to our  
11                  willful case, regardless of Ms. Keefe saying, We  
12                  don't know what the technology is. You know,  
13                  we've been hearing that song and dance since day  
14                  one.

15                  So the information that's in these  
16                  previous litigations and like an olympic  
17                  universe of information we're entitled to.  
18                  There's absolutely no reason not to give it up  
19                  at this time.

20                  THE COURT: Ms. Keefe, do you want  
21                  to add anything regarding why it wouldn't be  
22                  relevant, assuming I reach this issue on the  
23                  merits?

24                  MS. KEEFE: Your Honor, this is

1                   absolutely not relevant at this point. They've  
2                   actually -- they have established absolutely no  
3                   way of knowing that -- sorry. Let me back up.

4                   They have not established, in any  
5                   way, that we had access to any White papers or  
6                   documentation, and that they have and we've  
7                   answered interrogatories that have absolutely  
8                   said that we did not. And so it is not relevant  
9                   at this point.

10                  And the only thing that they've  
11                  otherwise been saying is that these litigations  
12                  are somehow related to the technology of the  
13                  Facebook website. And that's exactly what this  
14                  staggered approach is designed to do is to try  
15                  to figure out what is that technology that  
16                  they're using. The fact that they've identified  
17                  some modules that they want to look at does not,  
18                  by definition, make them relevant.

19                  In fact, they haven't even viewed  
20                  those modules yet. They're scheduled to do so  
21                  later that week.

22                  We would ask that the Court  
23                  continue with the parties on the course set by  
24                  Judge Farnan, and that they be forced to look at

1           the source code, come back and tell us what's  
2           really at issue in this case. And we'll go  
3           forward from there.

4                           THE COURT: All right. And,  
5                           Mr. Andre, whether it's up to me independently  
6                           or whether Judge Farnan has already decided that  
7                           this is the way to proceed, it sounds like a  
8                           reasonable way of proceeding, why should I not  
9                           hold you to going and reviewing some of this  
10                           source code and other materials and then seeing  
11                           if you can make a showing as to the relevance of  
12                           the other litigation and maybe the other stuff  
13                           you're seeking here?

14                           MR. ANDRE: Your Honor, it's  
15                           something that we can already show the relevance  
16                           of at least Connect U, because that has been  
17                           produced publicly or a hundred pages of it has  
18                           been.

19                           We need the technical documents  
20                           when we get to that part of the brief to  
21                           actually understand the source code. If you  
22                           read source code in a vacuum, you can do it, to  
23                           some degree, but you need the supporting  
24                           documents, the design notes, and various other

1           technical support for that source code to get  
2           full understanding of what's going on there.

3                   So, you know, this is nothing more  
4           than Facebook from day one they're trying to run  
5           out the clock on us. We have a November  
6           discovery cutoff in this case.

7                   And they've been acting like they  
8           don't know what this case is about. We've given  
9           detailed infringement contentions based on  
10           public information. We identified the  
11           functionality.

12                   We gave them screen shots. We  
13           gave them API calls.

14                   It is something that, regardless  
15           of what we say, they come back and plead  
16           ignorance. We don't know what they're talking  
17           about now.

18                   They are saying that is not  
19           relevant. Well, I know for a fact the Connect U  
20           testimony is relevant.

21                   I can tell you right now what I'd  
22           like to use in that testimony in my case in  
23           chief, just what I told you about, the amount of  
24           time it took them to write the code for the

1 Facebook website.

2 So there's other information there  
3 as well. Obviously, the design features and  
4 some other identification of documents of  
5 witnesses that we would like to get. So I know  
6 that's relevant.

7 And Ms. Keefe saying that, you  
8 know, we don't know what the case is about. All  
9 one has to do is read the patent and the claims  
10 and, as Judge Farnan said on multiple occasions,  
11 this is not the type of claims that people  
12 cannot understand. It's fundamental  
13 architecture of their website that we believe is  
14 infringing and there's no reason to withhold  
15 these documents whatsoever.

16 They have already produced them  
17 once in the previous litigations. They can do it  
18 again.

19 THE COURT: I guess by necessity,  
20 we've overlapped now into the second request  
21 that Leader makes which is more specifically  
22 with respect to the technology for the Facebook  
23 website.

24 Is there anything else to add on

1 that request that we haven't already addressed?

2 Mr. Andre, first.

3 MR. ANDRE: Your Honor, none other  
4 than there's no reason not to produce it. The  
5 only reason they put forward is they said Judge  
6 Farnan didn't order it.

7 They have been dodging their  
8 discovery obligations since the beginning of  
9 this case. Just because a judge doesn't order  
10 it, that doesn't mean you don't produce it  
11 pursuant to the Federal Rules.

12 So our position there is that we  
13 identified the module or the data files,  
14 whatever you want to call them. We want the  
15 supporting documents for those so we can make  
16 heads or tails of the source code. And there's  
17 absolutely no reason not to produce them.

18 THE COURT: And when is it that  
19 you're scheduled to go look at something?

20 MR. ANDRE: We have our expert  
21 witness coming in this week to look at it on  
22 Thursday.

23 THE COURT: And why should I not  
24 put all of this on hold, you know, my decision,

1 you know, for a week or so and get you all back  
2 after you had the chance to have your expert  
3 review those materials that are already arranged  
4 to be seen and see what the dispute looks like,  
5 you know, a week from now?

6 MR. ANDRE: Well, the expert  
7 already informed us that he'll need technical  
8 documents to actually conclude, you know, make  
9 his evaluation of the source code.

10 THE COURT: So are you saying he's  
11 not going to be able to get anything productive  
12 done on Thursday if I --

13 MR. ANDRE: No. We'll get some  
14 productive information done. There's no doubt  
15 about it.

16 He's going to be able to go in,  
17 see how the source code is set out because the  
18 list they gave us was -- it was supposed to be a  
19 map of the source code. They didn't give us a  
20 map.

21 They gave us a list of 400 titles,  
22 some of them as ridiculous as this is Letter R  
23 or the Letter N or entitled documents. So  
24 they're not descriptive in nature and they were

1 not a map at all.

2                   But we decided we're going to work  
3 with this, because we know what their approach  
4 is, try to push discovery out as long as  
5 possible and run out the clock on us.

6                   What the expert is going to do is  
7 go in and see how the source code is structured.  
8 He's going to do a lot of information from that  
9 first review.

10                  He's not going to be able to get a  
11 conclusive call one way or the other on the  
12 source code until he actually sees the support  
13 documents.

14                  THE COURT: Ms. Keefe, I want you  
15 to have a chance to address anything further  
16 with respect to the technology documents, but  
17 also articulate for me what, if anything, I  
18 would be gaining particularly in terms of  
19 clarity of this issue if I were to defer ruling  
20 for, say, a week until after the expert for  
21 Leader has had a chance to do whatever he or she  
22 is going to do on Thursday.

23                  MS. KEEFE: Absolutely. Thank  
24 you, Your Honor.

1                   I think, first off, this goes back  
2                   to the notion that this is -- we're in a new  
3                   kind of place with this discovery.  We're in a  
4                   staggered form.

5                   Yet their argument has always  
6                   been -- we understand that ours has always been  
7                   that we don't.  Judge Farnan specifically  
8                   accepted both parties' position, and in fact, he  
9                   actually said, you know, "Okay.  Leader's given  
10                  enough at this stage of the case, but not enough  
11                  to let them go full bore into Facebook."

12                  And that's why he created  
13                  something that would protect both sides, their  
14                  interest at looking at some information, but our  
15                  interest in protecting what's most important to  
16                  us, which is our code.  And the fact that the  
17                  site and the company are essentially massive,  
18                  and therefore, we need to be able to make sure  
19                  that only what's relevant is what's going on.

20                  The judge then said what -- you  
21                  know what I think -- this is another quote.  
22                  "What I think we need to do to try and make this  
23                  a little bit informed and to let it evolve a  
24                  little bit, I think I would like Facebook to

1 produce that category list" -- which we did.

2 "Then I'd like to see how reasonable Leader is  
3 in pulling that list. Does that make sense?"

4 So we gave them a list. They  
5 picked their list.

6 We thought it was a little bigger  
7 than it should be, but we denied to -- not to  
8 raise that fight. Now, we're producing that  
9 material. Then they -- they haven't even seen  
10 the code and yet they're telling me that they  
11 can't understand it.

12 I think that they will find that  
13 the code actually is quite understandable. I am  
14 not a computer scientist and I'm able to  
15 understand Facebook's code by looking at it.

16 This isn't a company that makes  
17 software that they then sell, so there aren't  
18 things like user manuals going around. Facebook  
19 crafts little keys.

20 It goes up on the -- as the  
21 website and it changes over time quite a bit.  
22 So I think Your Honor's approach in going back  
23 to what Judge Farnan had originally intended is  
24 a good one, because I think they'll find when

1       they actually do review the code that they will  
2       understand what they're looking at. And they'll  
3       then be able to narrow their request as everyone  
4       intended this process to do in order to only get  
5       at that which they really need and not the  
6       things that they don't.

7                Regardless of what Mr. Andre says,  
8       we do not still actually have a good grasp on  
9       what they are accusing of infringement. And  
10      that's why this process was set in place.

11               So, please, Your Honor, don't put  
12      the cart before the horse. Have them review the  
13      code. They're set to do so this week.

14               And then Mr. Andre and myself can  
15      talk about what they saw or didn't see, why  
16      something made sense or didn't make sense.

17      Judge Farnan also anticipated this happening and  
18      he said that if, in fact, once we went through  
19      process number one, we couldn't agree on what  
20      was happening, he talked about the possibility  
21      of bringing experts in from both sides to tell  
22      him why they would want more than has been  
23      already given, or an expert on my side to say  
24      why they don't need what's going on.

1 So that was another part of Judge  
2 Farnan's entire approach to this stage-in-tiers  
3 discovery. We're not trying to stall things.

16 MR. ANDRE: Yes, Your Honor.

17       Essentially what's happening, we've filed a very  
18       specific set of Request for Admissions.

1                   the reality that it would be impossible to craft  
2                   our RFA that would be answerable according to  
3                   Facebook. So they objected to all the RFA's and  
4                   then denied it based on those objections.

5                   I mean, just to give Your Honor  
6                   some examples, if you look at the Request for  
7                   Admission 22 where it says admit that Facebook's  
8                   website stores information about users in one or  
9                   more databases. The objection was that was  
10                  vague and ambiguous.

11                  They said the word stores  
12                  information and users are vague and ambiguous,  
13                  and therefore, they denied it based on that.

14                  Another one that was a good  
15                  example is RFA 28, admits that Facebook's  
16                  website is hosted from servers located in the  
17                  territory of the United States. Objection to  
18                  the word hosted and denied the RFA based on  
19                  that.

20                  You know, counsel can play these  
21                  games of not wanting to admit any RFA. And  
22                  admitting RFA's or not are discovery tools that  
23                  lawyers don't like to use or to answer. But  
24                  there has to be some substantive responses other

1 than denials based on objections.

2 THE COURT: And what about the  
3 proposals that they offered to try to get you  
4 more information, either they would answer an  
5 interrogatory giving their explanation for their  
6 denials or you would serve new RFA's?

7 MR. ANDRE: Well, the new RFA's  
8 would -- they wouldn't commit to the fact. If  
9 we gave RFA's with specific definitions, they  
10 asked -- when they asked us to define  
11 essentially every word in the RFA. If we were  
12 to give those specific RFA's, would they even  
13 answer those?

19 It was -- obviously, Ms. Keefe  
20 would love to ask for extension of discovery and  
21 lose our trial date in June of next year.

1       would use up all of our remaining  
2       interrogatories. We have a limited number of  
3       interrogatories in the case.

4                   THE COURT: What if we amended it  
5       so that it wouldn't count towards your  
6       interrogatory limit, or alternatively, required  
7       them to respond very quickly to a new set of  
8       RFA's.

9                   Would either of those approaches  
10      solve the problem?

11                  MR. ANDRE: That would be fine,  
12      Your Honor, if they responded substantively and  
13      not with just objections. Again, that would be  
14      fine with us.

15                  THE COURT: All right. Ms. Keefe.

16                  MS. KEEFE: Well, I mean, Your  
17      Honor, I can't -- I'm not even sure where to  
18      start. Let me back up.

19                  As far as the interrogatory  
20      proposition goes, our proposition to them was  
21      that we would answer an interrogatory, so long  
22      as -- and we wouldn't count it as each one being  
23      a separate interrogatory for each RFA that had  
24      to be responded to so long as they would give us

1 the same courtesy. If, after we served RFA's on  
2 them, a single interrogatory would count.

3 So it wasn't at all that the rogs  
4 would be used up. It was exactly the opposite.

5 It was that both parties would  
6 agree that the rogs would not be used up and  
7 they would treat interrogatories to define why  
8 the RFA was answered that way in a similar  
9 fashion. So we'd actually be extremely content  
10 if Your Honor said, All right. You're allowed  
11 to serve an interrogatory asking for the reasons  
12 for the denial. We will answer that  
13 interrogatory and not count it against their  
14 total.

15 So long as when we serve RFA's on  
16 them and then serve a similar single  
17 interrogatory, it doesn't count against us.  
18 That's the proposition and we are still willing  
19 to do that.

20 THE COURT: Let's stop there,  
21 because my understanding is Mr. Andre would be  
22 content with that. Am I right, Mr. Andre?

23 MR. ANDRE: Your Honor, that would  
24 be fine as long as, you know, the -- one of our

1       concerns is that, you know, we sent a very  
2       limited world of RFA's to them and there is no  
3       limit on RFA's.

4               Even though we requested it in our  
5       Rule 16 conference, there are no -- in our  
6       initial conference with the counsel. Then we  
7       stipulated to the fact that there would be no  
8       limits on RFA's.

9               So we are a little bit concerned  
10      by the fact that we may get 250 RFA's from them.  
11      It would be so unduly burdensome for us to have  
12      to answer them on a interrogatory basis, that  
13      that would be our only concern.

14               Maybe if counsel would agree to  
15      limit the number of RFA's in the case in total,  
16      that would be a way to alleviate that concern.

17               THE COURT: All right. I'm not  
18      going to require any limitation on RFA's.

19               At this point, I find I've got at  
20      least a full-time job just dealing with the  
21      discovery disputes that are in front of me. I'm  
22      not going to worry about ones that might come  
23      down the pike.

24               But if they do, obviously you all

1 know how to raise a discovery dispute with me.  
2 With respect to the RFA's, I am going to rule by  
3 ordering that Facebook provide in the form of  
4 interrogatory response. I guess actually I need  
5 to rule, Mr. Andre, that Leader serve an  
6 interrogatory that won't count towards your  
7 limit whereby you ask for Facebook's basis for  
8 the responses to the RFA's.

9                   If at some point Facebook wants to  
10 serve the same interrogatory for the same  
11 limited purpose on Leader, that interrogatory  
12 also will not count towards whatever  
13 interrogatory limit is otherwise in place. That  
14 takes care of that issue.

15                   And let me give you my ruling with  
16 respect to the first two issues that Leader has  
17 raised. And there I'm going to deny without  
18 prejudice to -- I'm going to deny Leader's  
19 request at this time for any further -- for any  
20 production of documents from other litigation or  
21 production of additional technical documents.

22                   I want to let the situation that's  
23 in place play out, but only for a very limited  
24 additional time. And specifically let me tell

1 you what I'm looking for.

2 My understanding is that Leader's  
3 expert is going to be reviewing source code this  
4 Thursday the 16th. After that review is  
5 complete, the parties are to meet and confer and  
6 discuss, at a minimum, these two discovery  
7 requests that Leader presented to the Court  
8 today.

17 And I will get back to you after I  
18 get that letter as to whether I need further  
19 information from you and whether I need to  
20 schedule a call or if I'm able to just resolve  
21 it based on the letter.

22 I don't want any reargument at  
23 this time, but I do want to make sure everybody  
24 understands what I have ruled here.

1                   Any questions, Mr. Andre?

2                   MR. ANDRE: No, Your Honor. Thank  
3                   you.

4                   THE COURT: Okay. And Ms. Keefe?

5                   MS. KEEFE: No. Thank you very  
6                   much, Your Honor.

7                   THE COURT: All right. Thank you  
8                   all very much, counsel.

9                   Bye.

10                  ( Teleconference was concluded at  
11                  3:09 p.m. )

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1       State of Delaware )  
2                        )  
2       New Castle County )

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5                        CERTIFICATE OF REPORTER

6

7                        I, Heather M. Trioletti, Registered  
8       Professional Reporter, Certified Shorthand Reporter,  
9       and Notary Public, do hereby certify that the  
10      foregoing record, Pages 1 to 36 inclusive, is a true  
11      and accurate transcript of my stenographic notes  
12      taken on July 14, 2009, in the above-captioned  
13      matter.

14

15                       IN WITNESS WHEREOF, I have hereunto set my  
16      hand and seal this 24th day of July, 2009, at  
17      Wilmington.

18

19

20

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21                       Heather M. Trioletti, RPR, CSR  
22                       Cert. No. 184-PS

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